

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE S.PALANIVELU

CRIMINAL REVISION CASE No.485 OF 2007

Ravindra Kumar ...Petitioner/Accused

-vs-

Padmanaban ...Respondent/Complainant

Revision under Section 397 read with 401 of the Code of Criminal Procedure.

For petitioner : Mr.I.C.Vasudevan

For respondent : Mr.A.K.Kumarasamy

J U D G M E N T

This revision is filed against the judgment, dated 01.02.2007, passed in CrI.R.C.No.83 of 2006 by the Principal Sessions Judge, Erode, wherein the judgment passed by the Judicial Magistrate, Perundurai, in C.C.No.12 of 2005, dated 17.04.2006, was modified, enhancing the compensation from Rs.25,000/- to Rs.65,000/-.

2. Petitioner is the accused in the Calendar Case, which was taken on file on the complaint lodged by the respondent/complainant, on the strength of dishonour of a cheque, reportedly issued by the petitioner on 31.07.2004, for a sum of Rs.45,000/-.

3. The Judicial Magistrate, after considering the oral evidence on record, found the petitioner guilty of the offence under Section 138 of The Negotiable Instruments Act, in short 'the Act', slapping a fine of Rs.3,000/- and, in default of payment, to undergo simple imprisonment for six months, also directing him to pay a sum of Rs.25,000/- as compensation to the respondent/complainant, under Section 357 (3) Cr.P.C.

4. Not satisfied with the sentence imposed on the accused, the complainant preferred a revision before the Principal Sessions Court, Erode, in Criminal Revision Petition No.83 of 2006, for enhancement of sentence of compensation. On going through the facts, the Principal Sessions Judge allowed the revision, enhancing the compensation from Rs.25,000/- to Rs.65,000/- and, in default of payment, to undergo

rigorous imprisonment for one year, under Section 397 Cr.P.C.

5. The accused has carried the said order of enhancement of compensation in revision before this Court.

6. In order to get enlightened about the nature of relief to be awarded by the Courts below and the relief considered by this Court, a perusal of the relevant provision, namely, Section 397 Cr.P.C. is inevitable, which reads as under :

"397. Calling for records to exercise powers of revision.-

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purpose of this sub-section and of Section 398.

(2) xxx

(3) xxx"

7. Revisional powers of the High Court are very wide but are purely discretionary and exercisable only when there is a glaring defect in the procedure and a manifest error on point of law, leading to miscarriage of justice. The power of revision is to be exercised only for correcting injustice and not mere illegality, which may not go to the root of the case. The interference of Court in revision is justified, if the decision rendered by the Court below is patently or grossly erroneous or there is no compliance with the provisions of law and when there is a violation of the statutory requirements. As adverted to supra, the revisional jurisdiction of the High Court must be exercised, if there is any glaring defect in the procedure or manifest error on point of law, resulting in a flagrant miscarriage of justice.

8. Now, the matter has to be looked into, in the backdrop of the above said principles laid down in the illuminating judicial pronouncements.

9. The Principal Sessions Judge has justified the enhancement of compensation in his order, saying that considering the cheque amount, the compensation awarded by the trial Court was not adequate and it required enhancement, for the purpose of achieving the object of Section 138 of the Act. He also followed the principles laid down in various decisions of the High Court and the Supreme Court. He further referred to a decision of the Himachal Pradesh High Court in *Pran Nath Tikku v. Rajirider Maheswari*, 2004 Cri.L.J.3772, in which it was concluded that the Sessions Judge is empowered to enhance the sentence under Section 397 Cr.P.C. Also, he quoted a decision of this Court in *M/s.Sasi Polycolours v. M/s.Lakshmi Polymers & Others*, 2006 Cri.L.J. 2489, in which it was observed that in order to avoid delay and multiplicity of litigation, the sentence of compensation of twice the amount of the cheque had to be awarded, in exercise of revisional powers.

10. Learned counsel for the petitioner would draw attention of this Court to a decision in *Suganthi Suresh Kumar v. Jegadeesan*, 2001 (3) CTC 29, in which it was held that this Court can only alter the nature or the extent of sentence or alter the nature and the extent of sentence, but fresh compensation cannot be awarded, while exercising the powers of revision under Section 401 Cr.P.C., which envisages exercise of powers under Section 386 Cr.P.C. It leads to a logical conclusion that the High Court or a revisional Court cannot impose fresh compensation, when the Judicial Magistrate has not awarded any compensation, but the facts of the case on hand are distinguishable.

11. Learned counsel for the petitioner also places reliance upon a decision of the Supreme Court in *Mangilal v. State of Madhya Pradesh*, 2004 (1) MWN (Cr.) (SC) 69, in which it is held as follows :

"12. The use of the expression "may" throws light on the legislative intent in the context it is used. It has been used in the permissible sense and does not make it obligatory. In the aforesaid background, the inevitable conclusion is that if the Appellate Court intends to award compensation, an opportunity of hearing has to be granted so that the relevant aspects like the need to award compensation, capacity of the accused to pay and several other relevant factors can be taken note of."

12. The Apex Court has laid down a dictum that while fixing quantum of compensation, the accused ought to be heard and non-observation of the procedure would be a violation of principles of natural justice. But, in the present case, no such circumstance is

available. The Principal Sessions Judge passed orders, only after hearing both sides, and rendered a finding that considering the cheque amount and the object of Section 138 of the Act, the enhancement of compensation was unavoidable. The said finding, in my view, is in accordance with law. Therefore, the decision aforesaid is of no avail to the petitioner.

13. Conversely, learned counsel for the respondent garnered support from a decision of the Supreme Court in *Pankajbhai Nagjibhai Patel v. State of Gujarat*, 2001 CRI.L.J.950, wherein the Apex Court had referred to its previous judgment and reached a conclusion that a Magistrate can award any sum, as compensation. The relevant portion of the said decision goes thus :

"16....Even that apart, a Magistrate who thinks it fit that the complainant must be compensated with his loss he can resort to the course indicated in Section 357 of the Code. This aspect has been dealt with in *Bhaskaran's case (supra)* as follows :

'However, the Magistrate in such cases can alleviate the grievance of the complainant by making resort to Section 357 (3) of the Code. It is well to remember that this Court has emphasised the need for making liberal use of that provision (*Hari Singh v. Sukhbir Singh*, 1988 (4) SCC 551). No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation, the Magistrate has to consider what would be the reasonable amount of compensation payable to the complainant. Thus, even if the trial was before a Court of Magistrate of the first class in respect of a cheque which covers an amount exceeding Rs.5,000/-, the Court has power to award compensation to be paid to the complainant.'

17. In our view, this question does not now pose any practical difficulty. Whenever a Magistrate of the first class feels that the complainant should be compensated, he can, after imposing a term of imprisonment, award compensation to the complainant, for which no limit is prescribed in Section 357 of the Code."

14. The above said decisions on the subject would clearly go to show that certain procedures have to be adopted, while fixing or enhancing the compensation by the Judicial Magistrate, the first being that both the parties particularly the accused shall be afforded ample opportunity of being heard; secondly, the other circumstance, namely, in the like nature of cases, the quantum referred to in the cheque and, nextly, the objects of Section 138 of the Act, not to be defeated.

15. Inasmuch as the order under challenge, the same was passed by the Principal Sessions Judge, after considering the above aspects and following the guidelines formulated in the authoritative judicial pronouncements. Hence, this Court does not find any manifest error or any miscarriage of justice in the said order. The enhancement ordered by the Principal Sessions Court, Erode, is well within the four corners of law and the same deserves confirmation.

16. For the foregoing reasons, this Criminal Revision Case is dismissed. No costs. Consequently, the connected Crl.M.P.Nos.1 and 3 of 2007 stand closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dixit

To

1. The Principal Sessions Judge,
Erode.

2.The Judicial Magistrate Court,
Perundurai, Erode District.

3.-do- Thro' The Chief Judicial Magistrate,
Erode.

+1cc to Mr.I.C.Vasudevan, Advocate Sr 69916
+1cc to Mr.A.K.Kumarasamy, Advocate Sr 69723

NSM (CO)
km/4.12.

CRL.R.C.No.485 OF 2007